

HON'BLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26663 of 2007

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Date: December 26, 2007

Between:

M. Nagesh Reddy.

... Petitioner

And

1. The Collector (Panchayath Wing),
Adilabad, Adilabad District
and 2 others.

... Respondents

* * *

ORDER:

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Heard the learned counsel appearing for the petitioner as well as learned Government Pleader for Panchayat Raj, appearing for the respondents.

2. The case of the petitioner is that he was elected as Sarpanch of Awalpur village, Bela Mandal, Adilabad District in the elections conducted in the year 2006. While so, one Sri Sama Linga Reddy, son of Narsing, filed an application dated 22.4.2007 for grant of permission to construct cattle shed in the place of old cattle shed bearing house No.2-83. It is stated that the said Sama Linga Reddy has been paying house tax to the said house. Pursuant to the said application dated 22.4.2007 a notice dated 25.4.2007 was issued to the neighbours calling upon their objections to consider the request of the said applicant to accord permission for construction of a new cattle shed in the place of old one. It is also stated that no objections have been filed. Accordingly, the matter was placed for discussion and in the meeting held by the Gram Panchayat on 12.5.2007 permission was accorded to the said Sama Linga Reddy for construction of new cattle shed. In connection with the said sanction of the cattle shed, it appears that one ward member of Awalpur Gram Panchayat made a

representation dated 26.5.2007 stating that the said Sama Linga Reddy constructed the cattle shed over the public road duly obtaining illegal permission from the Sarpanch. With regard to the said representation filed before the District Collector, Adilabad, a report was called for and the Extension Officer (PR & RD), Bela submitted reports stating that the petitioner failed to produce any records and documents such as ownership documents, resolution of the Gram Panchayat and map showing the boundaries and suspected that, no records were maintained by the Sarpanch before issuing such permission, as such requested to take necessary action. Accordingly, a show cause notice dated 20.6.2007 was issued to the petitioner under Section 249 (6) of Andhra Pradesh Panchayat Raj Act, 1994, calling upon the petitioner to submit explanation within a week from the date of receipt of the show cause notice as to why suitable action should not be initiated against him. It is stated that explanation was submitted on 03.7.2007 and based on the report submitted by the Extension Officer dated 08.7.2007 the petitioner was placed under suspension from the post of Sarpanch under Section 249 (6) vide proceedings No.404/K4.Pts/2007, dated 23.7.2007 by the Collector (Panchayat Wing), Adilabad. Aggrieved by the same, the petitioner filed a revision before the Government on 02.8.2007 along with an application for grant of stay and as the Government did not consider the stay application, petitioner filed W.P.No.21139 of 2007 which was disposed of by an order dated 06.10.2007 directing the third respondent-Government to dispose of the appeal and the stay petition within a period of three weeks from the date of receipt of the said order. It is stated that though the order of this Court in W.P.No.21139 of 2007 dated 06.10.2007 was communicated in the second week of October, even after expiry of three weeks the stay application has not been considered and disposed of.

3. Learned counsel for the respondents submits that no doubt

under Section 249 (6) suspension of Sarpanch shall be made for a period not exceeding three months pending investigation. Sub-Section 6 of Section 249 of the Act empowered the Government to extend the suspension period for three more months and the total period not exceeding six months.

4. In the instant case the suspension was made on 23.7.2007 and three months period is already over by 23.10.2007. Though an appeal was filed on 02.8.2007 along with stay application and inspite of specific directions granted by this court in W.P.No.21139 of 2007 dated 06.10.2007, the Government did not choose to consider the stay application, but on the other hand extended the suspension by G.O.Rt.No.1430, Panchayat Raj and Rural Development Department, dated 15.10.2007 for a period of three months with effect from 24.10.2007 so as to enable the Collector (Panchayat Wing), Adilabad District to finalize the matter and the Collector was directed to complete the enquiry.

5. The learned counsel appearing for the petitioner submits that the suspension of the petitioner itself is illegal, arbitrary and without any justification and against the principles of natural justice. It is stated that the petitioner was suspended mainly on the report submitted by the Extension Officer dated 08.7.2007 and the said report dated 08.7.2007 was not at all furnished to the petitioner. The explanation of the petitioner was also not considered and without considering any explanation and without furnishing copy of report dated 08.7.2007 the petitioner was suspended. It is further stated that as per the proviso to sub-Section 6 of Section 249 of the Act unless reasonable opportunity after making representation against proposed action is provided, the suspension pending enquiry cannot be made. In support of the said contention, the petitioner also relied on the decision of a Division Bench of this Court in **D. Sathi Reddy V. Commissioner, Panchayat Raj A.P., Hyderabad and others**^[1] contending that the report of the

Extension Officer dated 08.7.2007 was not at all furnished and therefore there is violation of principles of natural justice.

6. Though the petitioner was suspended by order dated 23.7.2007, no regular enquiry has been initiated so far. I am of the opinion that in view of the nature of allegation, which is trivial in nature, and there was no objection from any of the neighbours and no appeal has been filed against the alleged illegal action on the part of sarpanch according sanction to construct cattle shed in the place of old one, the suspension of the petitioner from the post of Sarpanch of Awalpur is unjustified.

7. Having regard to the facts of the case, the writ petition is allowed and the suspension of the petitioner pending revision before the Government is suspended and the petitioner shall be permitted to act as Sarpanch of Awalpur village pending disposal of revision before the Government. However, this order will not preclude the authorities to initiate regular departmental enquiry and take appropriate action as ordered in G.O.Rt.No.1430, dated 15.10.2007.

(V. ESWARAI AH, J)

Date: December 26, 2007.

Note:

Issue CC by three days.

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BSB

[\[1\]](#) 1999(5) ALD 681 (DB)